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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,320	05/23/2007	Michiel Christiaan Rombach	3135-062156	6948

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EXAMINER

BOOTH, MICHAEL JOHN

ART UNIT	PAPER NUMBER
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4158

MAIL DATE	DELIVERY MODE
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10/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/589,320

Applicant(s)

ROMBACH, MICHEL
CHRISTIAAN

Examiner

MICHAEL J. BOOTH

Art Unit

4158

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>03/06/2008</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Preliminary Amendment

Acknowledgement is made of the preliminary amendment filed August 14, 2006.

Claims 1-12 have been cancelled and claims 13-24 will be prosecuted on the merits.

Specification

The disclosure is objected to because of the following informalities: inconsistencies in grammatical format are used. For example, on page 4, line 29 and line 31. The range is first disclosed as +20-+30 and then as +3 to +5. There should be consistency between the two, and written in a manner so no confusion is caused when reading the application. Furthermore, please see below for arrangement of the specification, including how to label the individual sections.

Appropriate correction is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.

- (1) Field of the Invention.
- (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 23, it is unclear to the examiner what is being claimed. The claim refers to the GRIN type and it is unclear what is considered a type of GRIN. Further, on the specification on page 3, paragraph 2 refers to the GRIN principle, but it is unclear what this principle is. The examiner will interpret the term as having a diffraction structure with different indices of refraction.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-15, 17-22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Lang et al (US Patent 6,231,603; hereinafter Lang).

Concerning claim 13:

Lang discloses an artificial intraocular lens (IOL: 10) of variable optical power (column 2, lines 29-35) comprising at least two optical elements, such as a lens body (12) and IOL (10), being capable of shifting relative to each other in a direction perpendicular to the optical axis (Figures 2 and 4: 39). The elements further having a shape, which in combination have different optical powers at different positions (column 6, lines 25-32). The optical elements are connected to haptics, such as struts (16) and/or rim portions (18), these being connected through a connecting anchor, such as a spring (84). The material of the haptic being elastic, such as silicone or non-elastic, such as PMMA. (column 4, lines 24-33).

Concerning claim 14:

Lang discloses haptics (16 and 18) connected on opposite sides of the optical elements, such as the lens body (10). (Figure 1).

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Concerning claim 15:

Lang discloses a fixed lens, thus the elements of the lens are formed by fixed elements. (column 3, lines 18-30).

Concerning claim 17:

Lang discloses a connecting anchor adapted to be connected to a part of the capsular bag of the eye. The anchor, or fixation members, are made to be secured to be fixed in the capsular bag. (column 3, lines 12-17).

Concerning claim 18:

Lang discloses an adjustment means, connected to the optical elements, such as the lens body, for adjustment of the resting position, or relaxed position, of the optical elements. (column 2, lines 44-62).

Concerning claim 19:

Lang discloses the lens for correction of a disorder of the eye, such as a cataract. (column 1, lines 21-23).

Concerning claim 20:

Lang discloses the use of an accommodating artificial intraocular lens. (column 1, lines 51-62).

Concerning claim 21:

Lang discloses use of a non-accommodating artificial intraocular lens. Lang teaches art of multi-focal IOLs without accommodating movement, used to provide vision correction. (column 1, lines 21-29).

Concerning claim 22:

Lang discloses an artificial intraocular lens with at least one plane has an optical diffraction structure. Where the lens body can be diffractive. (column 1, lines 51-62).

Concerning claim 24:

Lang discloses optical elements, which are adapted to change their combined optical power when rotated. Although not explicitly discussed, accommodating is the movement of the lens, or shape change. This causes the power to change. Thus, if the optical elements were to be rotated, there would be an effect on the power of the lens.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lang as applied to claim 13 above, and further in view of Portney (US Patent 6,113,633).

Concerning claim 16:

Lang fails to disclose having a lens with an optical element having a saddle shaped surface. However, Portney discloses a saddle shaped surface, such as a concave surface. (column 3, lines 62-65). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lang lens with Portney's saddle shaped surface. There is motivation to combine the two references as they are in the same field of endeavor.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lang as applied to claim 13 above, and further in view of Hamblen (US Patent 4,022,855).

Concerning claim 23 (as best understood):

Lang fails to disclose a type of GRIN, or as the examiner interprets, a diffraction structure with different indices of refraction. However, Hamblen discloses a method for making a plastic lens with different indices of refraction. (Abstract). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lang with different indices of refraction. There is motivation to combine the two references as they both refer to optical elements.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. BOOTH whose telephone number is (571)270-7027. The examiner can normally be reached on Monday thru Thursday, 8:00am - 4:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on (571)272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10/24/2008

/M. J. B./

Examiner, Art Unit 4158

/Gary Jackson/

Supervisory Patent Examiner

Art Unit 4158